

United States Court of Appeals  
For the Eighth Circuit

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No. 14-1845

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David Anthony Stebbins

*Plaintiff - Appellant*

v.

Rita F. Stebbins; David D. Stebbins

*Defendants - Appellees*

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Appeal from United States District Court  
for the Western District of Arkansas - Harrison

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Submitted: September 24, 2014

Filed: September 26, 2014

[Unpublished]

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Before WOLLMAN, BYE, and SMITH, Circuit Judges.

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PER CURIAM.

David Stebbins appeals following the district court's<sup>1</sup> pre-service dismissal of his pro se action, in which he alleged that defendants, his parents, improperly listed him as a dependant on their tax returns.

In dismissing Stebbins's complaint, the district court concluded that Stebbins had a history of frivolous litigation and had abused the privilege of proceeding in forma pauperis; the court thus imposed restrictions on Stebbins's future filings. Specifically, the court limited the number of cases that Stebbins could file in the Western District of Arkansas to no more than one case every three months, and only upon payment of a \$50 bond, refunded if the complaint was adjudged not frivolous. The court added that nothing in its order prohibited Stebbins from proceeding with counsel, from defending himself in a lawsuit brought against him, or from filing a claim in which he alleged immediate, extraordinary, and irreparable physical harm. Stebbins challenges the dismissal of the action, and the imposition of filing restrictions.

Upon careful de novo review, see Moore v. Sims, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam), we conclude that the district court properly dismissed the complaint for failure to state a claim. We also conclude that the court did not abuse its discretion in imposing the filing restrictions, because it is undisputed that Stebbins has proceeded in forma pauperis on at least sixteen complaints that proved meritless, and has filed numerous frivolous motions, since May 2010; and he had the opportunity to, and did, file objections to the magistrate judge's report recommending the restrictions. See Day v. Day, 510 U.S. 1, 2 (1993) (per curiam) (court may impose filing restrictions where individual has filed numerous frivolous pleadings); In re

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<sup>1</sup>The Honorable P.K. Holmes, III, Chief Judge, United States District Court for the Western District of Arkansas, adopting the report and recommendations of the Honorable James R. Marschewski, United States Magistrate Judge for the Western District of Arkansas.

Tyler, 839 F.2d 1290, 1293-94 (8th Cir. 1988) (per curiam) (standard of review); Peck v. Hoff, 660 F.2d 371, 374 (8th Cir. 1981) (in imposing pre-filing review procedure, appellant's opportunity to respond to materials and arguments was sufficient). Further, in these circumstances, we conclude that the restrictions are not unduly harsh. Cf. Tyler, 839 F.3d at 1292-93 (affirming order that prospectively limited plaintiff to filing one in forma pauperis complaint per month); Green v. White, 616 F.2d 1054, 1055 (8th Cir. 1980) (per curiam).

The judgment is affirmed. See 8th Cir. R. 47B.

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**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CV-16-16

DAVID A. STEBBINS

APPELLANT

V.

DAVID D. STEBBINS

APPELLEE

Opinion Delivered: SEPTEMBER 7, 2016

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. CV-12-85]HONORABLE RUSSELL ROGERS,  
SPECIAL JUDGEREMANDED TO SETTLE AND  
SUPPLEMENT THE RECORD;  
REBRIEFING ORDERED

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**KENNETH S. HIXSON, Judge**

The parties to this appeal are appellant David A. Stebbins and his father, appellee David D. Stebbins. At the time of the incident giving rise to this litigation, the son was residing with the father. In an attempt to eliminate or reduce previous friction between the parties, the parties had executed a written agreement setting forth the terms and conditions whereby the son could live in the father's residence. On November 24, 2011, the police were called to the home of the father David D. Stebbins and found that the father had suffered knife wounds to his face. The son, David A. Stebbins, was arrested and charged with battery. The son subsequently filed suit against his father claiming that his father had breached the written contract between the parties that night by failing to provide adequate high-speed internet service. Appellant further claimed that, after he confronted his father about the problem with the internet, his father punched him in the face, and then the father

purposely cut his own face with a knife to make it appear as if he had been attacked by his son. Appellant asserted in his complaint that his father pressed criminal charges against him knowing them to be false, and used the alleged attack as a means to circumvent the lease-agreement provision of the parties' contract and unlawfully evict appellant from his house. The complaint alleged six separate causes of action, including malicious prosecution, abuse of process, defamation, breach of contract, conversion, and battery. Appellant subsequently filed an amended complaint, adding additional claims for identity theft, tort of outrage, negligence, and forgery.

The case was tried to a jury, and the jury's verdicts were returned in favor of the father David D. Stebbins. Thereafter, the trial court entered a judgment dismissing appellant's complaint with prejudice. David A. Stebbins filed a motion for a new trial and subsequently filed a second motion for new trial, which were both denied by the trial court. David A. Stebbins now appeals from the underlying judgment and the order denying his second motion for new trial.

On appeal, the son David A. Stebbins raises twenty-nine arguments for reversal. Because David A. Stebbins' addendum contains a document not contained in the record, we remand to settle the record to include that document if it exists. Specifically, we direct that the record be settled and supplemented with a letter from the trial judge to the parties dated January 23, 2015, a copy of which is contained in appellant's addendum at pages

190–91.<sup>1</sup> Moreover, because David A. Stebbins has submitted a brief with a significantly deficient addendum and abstract, we also order rebriefing.

Rule 4-2(a)(8) of the Arkansas Supreme Court Rules provides that the addendum contained in the brief must contain all documents in the record that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. Rule 4-2(a)(8)(A)(i) specifically provides that the addendum must include the jury’s verdict forms and the order being appealed. Appellant’s addendum does not include the jury’s verdict forms (interrogatories No. 1 through No. 4), nor does it include the trial court’s order denying appellant’s second motion for new trial, from which appellant has appealed. Additionally, we observe that one of appellant’s arguments challenges the trial court’s denial of his proposed jury instructions. While appellant did include in his addendum the instructions he proposed, he failed to include the jury instructions actually given by the trial court, and these jury instructions are also essential to our review of the case. Finally, we note that appellant’s case rests in large part on the alleged breach of the parties’ written contract, but there is no legible copy of the contract in the addendum. On rebriefing, we order appellant to include in the addendum each of the omitted documents identified above.

We further conclude that appellant’s abstract is in flagrant violation of Rule 4-2(a)(5)(B), which provides that the abstract “shall be an impartial condensation, without comment or emphasis, of the transcript.” The appellant’s abstract is inaccurate and misleading in numerous respects. For example, the abstract contains witness testimony

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<sup>1</sup> Pursuant to Ark. R. App. P.–Civ. 6(e), if anything material to either party is omitted from the record by error or accident, we may direct that the omission be corrected, and if necessary, that a supplemental record be certified and transmitted.

which, when compared to the actual record, has been partially fabricated. Additionally, the abstract contains numerous statements attributed to the trial judge that appear to have been manufactured by the appellant out of whole cloth. Appellant misquotes the judge as calling him a “punk” on multiple occasions, further misquotes the judge as stating that he had no regard for the law and was making his rulings based on his like for the defense and dislike for the appellant, and at the conclusion of the trial appellant misrepresents the trial judge as proclaiming that he was God and was incapable of making mistakes. These distortions in the abstract will not be tolerated by this court and must be corrected. On rebriefing, we order appellant to submit an accurate and impartial abstract of the material parts of the transcript, consistent with our abstracting rules.

Because of the deficiency in the record, we remand to the trial court to settle and supplement the record with the omitted document (the trial court’s January 23, 2015 letter) within thirty days. Pursuant to Arkansas Supreme Court Rule 4-2(b)(3), we order appellant to file a substituted abstract, addendum, and brief within fifteen days from the date that the supplemental record is filed. The materials listed herein are not intended as an exhaustive list of deficiencies, and we encourage appellant to carefully review the rules and ensure that no other deficiencies exist before filing his substituted abstract, addendum, and brief. If appellant fails to cure the deficiencies within the prescribed time, the orders appealed from may be affirmed for noncompliance with the rule. Ark. Sup. Ct. R. 4-2(b)(3). The appellee is allowed fifteen days from the date appellant files his substituted brief in which to respond, if he so chooses.

Remanded to settle and supplement the record; rebriefing ordered.

KINARD and WHITEAKER, JJ., agree.

*David A. Stebbins*, pro se appellant.

No response.



**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CV-16-16

DAVID A. STEBBINS

APPELLANT

V.

DAVID D. STEBBINS

APPELLEE

Opinion Delivered: September 6, 2017

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. 05CV-12-85]HONORABLE RUSSELL ROGERS,  
JUDGE

APPEAL DISMISSED

**KENNETH S. HIXSON, Judge**

The parties to this appeal are appellee David D. Stebbins and his adult son, appellant David A. Stebbins.<sup>1</sup> At the time of the incident giving rise to this litigation, the adult son was residing with the father. In an attempt to eliminate or reduce previous friction between the father and son, the parties had executed a written agreement setting forth the terms and conditions whereby the son could live in the father's residence. On November 24, 2011, the police were called to the home of the father David D. Stebbins and found that the father had suffered knife wounds to his face. The son, David A. Stebbins, was arrested and charged with battery. The son subsequently filed suit against his father claiming that his father had breached the written contract between the parties that night by failing to provide adequate high-speed internet service. Appellant further claimed that, after he confronted his father

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<sup>1</sup>This is David A. Stebbins' second appeal of this matter. We remanded the first appeal, ordering supplementation of the record and rebriefing due to deficiencies in his abstract and addendum. See *Stebbins v. Stebbins*, 2016 Ark. App. 385.

about the problem with the internet, his father punched him in the face, and then the father purposely cut his own face with a knife to make it appear as if he had been attacked by his son. Appellant asserted in his complaint that his father pressed criminal charges against him knowing them to be false, and used the alleged attack as a means to circumvent the lease-agreement provision of the parties' contract and unlawfully evict appellant from his house. The complaint alleged six separate causes of action, including malicious prosecution, abuse of process, defamation, breach of contract, conversion, and battery. Appellant subsequently filed an amended complaint, adding additional claims for identity theft, tort of outrage, negligence, and forgery.

The case proceeded to a jury trial, and at the conclusion of the trial the jury was given interrogatories pertaining to only two of the ten claims. Specifically, the jury was instructed on breach of contract and battery, and returned verdicts in favor of the father David D. Stebbins on those two claims. Thereafter, the trial court entered a "judgment on jury verdict against plaintiff," and the order stated that David A. Stebbins' complaint was dismissed. David A. Stebbins filed a motion for new trial and subsequently filed a second motion for new trial, which were both denied by the trial court. David A. Stebbins now appeals from the underlying judgment and the order denying his second motion for new trial.

On appeal, the son David A. Stebbins raises twenty-nine arguments for reversal. We dismiss the appeal for lack of a final order because the judgment disposed of only two of the son's claims, leaving eight claims remaining.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. Although the parties did not raise the issue, the question of a final order is a jurisdictional requirement that the appellate court raises on its own in order to avoid piecemeal litigation. *Wilkinson v. Smith*, 2012 Ark. App. 604. Arkansas Rule of Civil Procedure 54(b) provides that, when more than one claim for relief is presented in an action or when multiple parties are involved, an order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final, appealable order. In particular, an order that adjudicates fewer than all the counts of a multicount complaint is not final. *Brasfield v. Murray*, 2009 Ark. App. 879. Although Rule 54(b) provides a method by which the trial court may direct entry of a final order as to fewer than all the claims or parties, where there is no attempt to comply with those provisions of Rule 54(b), the order is not final, and we must dismiss the appeal. *Jerry v. Jerry*, 2014 Ark. App. 63.

In this case, the judgment on appeal provides that “[t]he court enters this judgment pursuant to the jury’s verdict.” However, the verdict forms indicate that the jury did not determine the rights of the parties on David A. Stebbins’ claims for malicious prosecution, abuse of process, defamation, and conversion, all of which were alleged in appellant’s original complaint. Nor did the jury resolve David A. Stebbins’ claims for identity theft, tort of outrage, negligence, or forgery, which were alleged in his amended complaint. Likewise, the trial court’s judgment did not dispose of these remaining claims. Although the judgment contains broad language that David A. Stebbins “takes nothing in his complaint against the defendant and the complaint is hereby dismissed with prejudice,” the

judgment was entered pursuant to the jury's verdict, which was limited only to appellant's claims for breach of contract and battery. The other four claims in David A. Stebbins' complaint remain unresolved. Moreover, the judgment makes no mention of appellant's amended complaint or the four claims therein.

Our supreme court has repeatedly held that it is not enough to dismiss some of the parties or to dispose of some of the claims; to be final and appealable, an order must cover *all of the parties and all of the claims*. *J-McDaniel Constr. Co. v. Dale E. Peters Plumbing Ltd.*, 2013 Ark. 177. Because a final order has not been entered disposing of all the claims, we lack jurisdiction of this appeal, and it must be dismissed.

Appeal dismissed.

GLOVER and WHITEAKER, JJ., agree.

*David A. Stebbins*, pro se appellant.

No response.

United States Court of Appeals  
For the Eighth Circuit

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No. 13-2687

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David Anthony Stebbins

*Plaintiff - Appellant*

v.

Rita F. Stebbins and David D. Stebbins

*Defendants - Appellees*

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Appeal from United States District Court  
for the Western District of Arkansas - Harrison

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Submitted: November 6, 2013

Filed: November 12, 2013

[Unpublished]

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Before SMITH, BOWMAN, and KELLY, Circuit Judges.

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PER CURIAM.

Petitioner David A. Stebbins appeals from the judgment of the District Court<sup>1</sup> dismissing his pro se action. Upon review of the record, we conclude that we lack

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<sup>1</sup>The Honorable P.K. Holmes, III, Chief Judge, United States District Court for the Western District of Arkansas.

jurisdiction to entertain this appeal. See Dieser v. Cont'l Cas. Co., 440 F.3d 920, 923 (8th Cir. 2006) (explaining that jurisdictional issues “will be raised sua sponte”). Following the dismissal of his complaint, Stebbins filed what was in effect a timely motion for postjudgment relief under Rule 59(e) of the Federal Rules of Civil Procedure. See Osterneck v. Ernst & Whinney, 489 U.S. 169, 174 (1989) (“[A] postjudgment motion will be considered a Rule 59(e) motion where it involves ‘reconsideration of matters properly encompassed in a decision on the merits.’” (citation to quoted case omitted)). That motion remains pending, and until the District Court rules on it, Stebbins’s notice of appeal will lie dormant. See Fed. R. App. P. 4(a)(4)(A) (noting that if a party timely files a Rule 59 motion for a new trial or to alter or amend the judgment, the time to file the appeal runs from the entry of the order disposing of such motion); United States v. Duke, 50 F.3d 571, 575 (8th Cir.); cert. denied, 516 U.S. 885 (1995).

Accordingly, we dismiss this appeal for lack of jurisdiction.

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